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9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. *2009-308*
ACCUSATION

13 TED ALAN LARIVE
1113 Red Maple Drive
14 Chula Vista, CA 91910-6769

15 Registered Nurse License No. 393230

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
22 Department of Consumer Affairs.

23 2. On or about November 30, 1985, the Board of Registered Nursing issued
24 Registered Nurse License Number 393230 to Ted Alan Larive (Respondent). The Registered
25 Nurse License was in full force and effect at all times relevant to the charges brought herein and
26 will expire on November 30, 2009, unless renewed.

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1 Safety Code or any dangerous drug or dangerous device as defined in Section
2 4022.

3 (b) Use any controlled substance as defined in Division 10 (commencing
4 with Section 11000) of the Health and Safety Code, or any dangerous drug or
5 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent
6 or in a manner dangerous or injurious to himself or herself, any other person, or
7 the public or to the extent that such use impairs his or her ability to conduct with
8 safety to the public the practice authorized by his or her license.

9 (c) Be convicted of a criminal offense involving the prescription,
10 consumption, or self-administration of any of the substances described in
11 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
12 record pertaining to, the substances described in subdivision (a) of this section, in
13 which event the record of the conviction is conclusive evidence thereof.

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15 8. Section 2765 of the Code states:

16 A plea or verdict of guilty or a conviction following a plea of nolo
17 contendere made to a charge substantially related to the qualifications, functions
18 and duties of a registered nurse is deemed to be a conviction within the meaning
19 of this article. The board may order the license or certificate suspended or
20 revoked, or may decline to issue a license or certificate, when the time for appeal
21 has elapsed, or the judgment of conviction has been affirmed on appeal or when
22 an order granting probation is made suspending the imposition of sentence,
23 irrespective of a subsequent order under the provision of Section 1203.4 of the
24 Penal Code allowing such person to withdraw his or her plea of guilty and to
25 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
26 accusation, information, or indictment.

27 9. Section 4022 of the Code states

28 "Dangerous drug" or "dangerous device" means any drug or device
unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits
dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this
device to sale by or on the order of a _____," "Rx only," or words of similar
import, the blank to be filled in with the designation of the practitioner licensed to
use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully
dispensed only on prescription or furnished pursuant to Section 4006.

10. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to
a person upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant

1 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or
2 a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
3 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.
4 This section shall not apply to the possession of any controlled substance by a
5 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
6 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
7 practitioner, or physician assistant, when in stock in containers correctly labeled
8 with the name and address of the supplier or producer.

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11 11. Section 490 of the Code provides, in pertinent part, that a board may
12 suspend or revoke a license on the ground that the licensee has been convicted of a crime
13 substantially related to the qualifications, functions, or duties of the business or profession for
14 which the license was issued.

15 12. Section 492 of the Code states:

16 Notwithstanding any other provision of law, successful completion of any
17 diversion program under the Penal Code, or successful completion of an alcohol
18 and drug problem assessment program under Article 5 (commencing with section
19 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit
20 any agency established under Division 2 ([Healing Arts] commencing with
21 Section 500) of this code, or any initiative act referred to in that division, from
22 taking disciplinary action against a licensee or from denying a license for
23 professional misconduct, notwithstanding that evidence of that misconduct may
24 be recorded in a record pertaining to an arrest.

25 This section shall not be construed to apply to any drug diversion program
26 operated by any agency established under Division 2 (commencing with Section
27 500) of this code, or any initiative act referred to in that division.

28 13. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by
a board within the department pursuant to law to deny an application for a license
or to suspend or revoke a license or otherwise take disciplinary action against a
person who holds a license, upon the ground that the applicant or the licensee has
been convicted of a crime substantially related to the qualifications, functions,
and duties of the licensee in question, the record of conviction of the crime shall
be conclusive evidence of the fact that the conviction occurred, but only of that
fact, and the board may inquire into the circumstances surrounding the
commission of the crime in order to fix the degree of discipline or to determine if
the conviction is substantially related to the qualifications, functions, and duties
of the licensee in question.

As used in this section, "license" includes "certificate," "permit,"
"authority," and "registration."

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1 **REGULATORY PROVISIONS**

2 14. California Code of Regulations, title 16, section 1444, states:

3 A conviction or act shall be considered to be substantially related to the
4 qualifications, functions or duties of a registered nurse if to a substantial degree it
5 evidences the present or potential unfitness of a registered nurse to practice in a
6 manner consistent with the public health, safety, or welfare. Such convictions or
7 acts shall include but not be limited to the following:

8 (a) Assaultive or abusive conduct including, but not limited to, those
9 violations listed in subdivision (d) of Penal Code Section 11160.

10 (b) Failure to comply with any mandatory reporting requirements.

11 (c) Theft, dishonesty, fraud, or deceit.

12 (d) Any conviction or act subject to an order of registration pursuant to
13 Section 290 of the Penal Code.

14 15. California Code of Regulations, Title 16, section 1445 states:

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16 (b) When considering the suspension or revocation of a license on the
17 grounds that a registered nurse has been convicted of a crime, the board, in
18 evaluating the rehabilitation of such person and his/her eligibility for a license
19 will consider the following criteria:

20 (1) Nature and severity of the act(s) or offense(s).

21 (2) Total criminal record.

22 (3) The time that has elapsed since commission of the act(s) or
23 offense(s).

24 (4) Whether the licensee has complied with any terms of parole,
25 probation, restitution or any other sanctions lawfully imposed against the licensee.

26 (5) If applicable, evidence of expungement proceedings pursuant
27 to Section 1203.4 of the Penal Code.

28 (6) Evidence, if any, of rehabilitation submitted by the licensee.

COST RECOVERY

16. Section 125.3 of the Code provides, in pertinent part, that the Board may
request the administrative law judge to direct a licensee found to have committed a violation or
violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
and enforcement of the case.

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1 **DRUG**

2 17. Methamphetamine is a Schedule II controlled substance as designated by
3 Health and Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to
4 Business and Professions Code section 4022.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(May 3, 2006 Criminal Conviction for Vandalism on February 13, 2006)**

7 18. Respondent has subjected his license to disciplinary action under sections
8 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is
9 substantially related to the qualifications, functions, and duties of a registered nurse. The
10 circumstances are as follows:

11 a. On or about May 3, 2006, in a criminal proceeding entitled *People*
12 *of the State of California v. Ted Larive*, in San Diego County Superior Court (South County
13 Division), case number S200984, Respondent was convicted on his plea of guilty of violating
14 Penal Code section 594; subdivision (a)(b)(2)(A), vandalism under \$400, a misdemeanor.

15 b. As a result of the conviction, on or about May 3, 2006, the court
16 suspended the imposition of sentence and placed Respondent on three years summary probation
17 on the condition he complete a 52-week parenting education program, five days of Public Work
18 Service, and payment \$220 in fees and fines, plus restitution. On or about July 7, 2006,
19 Respondent's probation was revoked for failure to abide by the probation terms and a bench
20 warrant was issued. At a hearing on or about December 12, 2008, Respondent's probation was
21 reinstated and he was ordered to complete a Domestic Violence Rehabilitation Program (six
22 sessions); failure to do so would result in 120 days in custody, to be served concurrently with
23 case no. S212041 (see paragraph 19, below.) At a hearing on or about February 27, 2009,
24 Respondent's probation was summarily revoked. Probation reinstatement was denied at a
25 hearing on April 7, 2009, and Respondent was sentenced to serve 66 days in jail with credit for
26 66 days.

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1 c. The facts that led to the conviction were that on or about the early
2 morning hours of February 13, 2006, officers from the Chula Vista Police Department responded
3 to a call of possible child abuse. Three minor boys were living with their mother and their
4 mother's boyfriend (Respondent), who had moved in several months earlier. The oldest
5 teenaged child (R/P) reported to police that Respondent had a history of methamphetamine use
6 and was mentally and verbally abusive towards him and his siblings. On or about February 12,
7 2006, R/P arrived home to find his 11-year old severely disabled brother standing in the kitchen
8 with the faucet running, flooding the floor. R/P confronted his mother and Respondent, who
9 were in bed asleep, over the lack of care in the home. A fight ensued and continued off and on
10 for the rest of the day and evening. At around eleven p.m., R/P was awakened to a crashing
11 sound. When R/P investigated the noise, he found that Respondent had destroyed his television
12 and Sony Playstation II and dumped them in a trashcan. Respondent confronted R/P and poked
13 R/P twice in the stomach with a rod leaving red marks. R/P went to a neighbor's house after
14 Respondent threatened to kill him. Respondent left the house before officers arrived but was
15 subsequently arrested.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(November 2, 2007 Criminal Conviction for Willful Infliction of Corporal Injury**
18 **& Resisting a Police Officer on July 2, 2007)**

19 19. Respondent has subjected his license to disciplinary action under sections
20 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is
21 substantially related to the qualifications, functions, and duties of a registered nurse. The
22 circumstances are as follows:

23 a. On or about November 2, 2007, in a criminal proceeding entitled
24 *People of the State of California v. Ted Larive*, in San Diego County Superior Court (South
25 County Division), case number S212041, Respondent was convicted on his plea of guilty of
26 violating Penal Code sections 273.5, subdivision (a), willful infliction of corporal injury on a
27 spouse/cohabitant, and section 148, subdivision (a)(1), willfully resisting and delaying a police
28 officer, misdemeanors.

1 b. As a result of the conviction, on or about November 2, 2007,
2 Respondent was sentenced to 365 days in custody, stayed pending the successful completion of a
3 six-month residential alcohol/drug treatment program, completion of a 52-week Domestic
4 Violence Rehabilitation Program, and payment of fees and fines (which were satisfied by
5 Respondent's 10 days in custody). Respondent was also ordered to complete five days with the
6 Public Work Service Program. Respondent was placed on five years summary probation. A
7 protective order was issued for Respondent's victim. At a hearing on or about April 7, 2009,
8 Respondent's probation was formally revoked. The court ordered probation continued on the
9 same terms and conditions until April 6, 2012. Respondent was sentenced to 99 days in jail with
10 credit for 99 days.

11 c. The facts that led to the conviction were that on or about the
12 morning of July 7, 2007, Chula Vista Police Officers were dispatched to a domestic violence call
13 at the home Respondent shared with his girlfriend and her three minor children. The oldest of
14 the children (R/P) advised the officers upon their arrival that Respondent was intoxicated and
15 slapping his mother. The officers went to the upstairs master bedroom and Respondent
16 attempted to slam the door in an officer's face, but it hit the officer's foot. Respondent was
17 nude, very intoxicated and belligerent, and yelled profanities at the officers. The officers
18 questioned the victim, Respondent's girlfriend Simone, who told them that Respondent assaulted
19 her the previous week and the night before, which accounted for the various bruises on her legs
20 and torso. The officers spoke to R/P who told them that he and his siblings were awakened by
21 loud music coming from his mother's bedroom at around 9 a.m. They heard Respondent yelling
22 profanities about the police, then they heard slapping sounds. R/P ran to the bedroom and was
23 confronted by Respondent who took a fighting stance and attempted to engage R/P in a fight.
24 Respondent grabbed R/P's younger brother and threw him on the bed. They left the bedroom
25 and called the police. R/P saw Respondent go into the master bedroom. Their mother, Simone,
26 apologized to Respondent that R/P called the police. Respondent told Simone he was sorry too,
27 then grabbed Simone by the head with both hands and threw her to the floor. Respondent was
28 arrested for domestic battery and child endangerment and Child Protective Services was notified.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(October 9, 2007 Criminal Conviction for Possession of Methamphetamine on May 4, 2007)**

3 20. Respondent has subjected his license to disciplinary action under sections
4 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is
5 substantially related to the qualifications, functions, and duties of a registered nurse. The
6 circumstances are as follows:

7 a. On or about October 9, 2007, in a criminal proceeding entitled
8 *People of the State of California v. Ted Larive*, in San Diego County Superior Court (Central
9 Division), case number SCD207989, Respondent was convicted on his plea of guilty of violating
10 Health and Safety Code section 11377, subdivision (a), possession of methamphetamine, a
11 felony.

12 b. As a result of the conviction, on or about October 9, 2007, the
13 court deferred the judgment for 18 months pursuant to Penal Code section 1000. At a hearing on
14 or about October 31, 2008, Respondent's sentence was converted to Penal Code section 1210
15 diversion and Respondent was placed on formal probation for three years. Respondent was
16 ordered to complete a drug treatment program, not use or possess drugs or alcohol, attend
17 Narcotics Anonymous or other self-help, submit to a Fourth Amendment Waiver, and seek and
18 maintain full-time employment. Fines, fees and restitution were waived upon successful
19 completion of diversion. On or about December 8, 2008, Respondent's Penal Code section 1210
20 diversion was revoked for failure to comply; the sentence was continued on the same terms and
21 conditions.

22 c. The facts that led to the conviction were that on or about the
23 afternoon of May 4, 2007, a patrol officer with the San Diego Police Department conducted a
24 traffic stop on Respondent who was driving a mini-van with an expired registration. The officer
25 searched Respondent and his female companion, Lisa. Respondent volunteered that he had an
26 open bottle of alcohol in the vehicle and some methamphetamine in his sock. Following his
27 arrest, Respondent gave a statement to the police officer wherein he said he worked the previous
28 night until 6 a.m. and then picked up Lisa. He wanted to purchase methamphetamine, so Lisa

1 directed him to her roommate. He gave Lisa's roommate \$185.00 for an 8-ball of
2 methamphetamine. Respondent and Lisa smoked some of the meth. They were on their way to
3 the Money Tree so that Lisa could wire some money when they were stopped by the police.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct - Possession of a Controlled Substance)**

6 21. Respondent has subjected his license to disciplinary action under sections
7 2761, subdivision (a), and 2762, subdivision (a) of the Code in that on or about May 4, 2007,
8 Respondent possessed methamphetamine in violation of section 4060 of the Code, and pled
9 guilty to possessing methamphetamine on October 9, 2007, as detailed in paragraph 20, above.
10 Such conduct constitutes unprofessional conduct.

11 **FIFTH CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct - Conviction of a Drug-Related Criminal Offense)**

13 22. Respondent has subjected his license to disciplinary action under sections
14 2761, subdivision (a), and 2762, subdivision (c) of the Code in that on or about October 9, 2007,
15 as detailed in paragraph 20, above, Respondent was convicted of a criminal offense involving the
16 possession of a controlled substance, to wit methamphetamine, which constitutes unprofessional
17 conduct.

18 **SIXTH CAUSE FOR DISCIPLINE**

19 **(March 9, 2009 Criminal Conviction for Grand Theft From a Person on October 13, 2008)**

20 23. Respondent has subjected his license to disciplinary action under sections
21 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is
22 substantially related to the qualifications, functions, and duties of a registered nurse. The
23 circumstances are as follows:

24 a. On or about March 9, 2009, in a criminal proceeding entitled
25 *People of the State of California v. Ted Larive*, in San Diego County Superior Court, case
26 number CS226825, Respondent pled guilty to violating Penal Code section 487, subdivision (c),
27 a felony reduced to a misdemeanor as part of the plea agreement under Penal Code section 17(b).

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1 b. As a result of the conviction, on or about April 7, 2009 Respondent
2 was sentenced to 62 days in jail with credit for 62 days.

3 c. The facts that led to the conviction were that on or about the
4 morning of October 13, 2008, officers from the Chula Vista Police Department responded to a
5 Circle K convenience store. The store's clerk reported that Respondent entered the store, gave
6 her a hug, then grabbed a hot dog and ate it outside. (Respondent was a regular customer at the
7 store.) Respondent returned to the clerk and asked for a pack of cigarettes and told her to hurry
8 up. As the clerk was handing Respondent the pack of cigarettes, he grabbed her hand and
9 squeezed it forcibly, crushing the cigarettes, and pulling her towards him. The clerk was very
10 fearful. He pulled the pack of cigarettes from her hand and left the store, driving away in a silver
11 Ford van. While the clerk was waiting for the police to arrive, Respondent returned to the store
12 in the van, but left after a few minutes. The clerk recognized Respondent from the closed circuit
13 video surveillance. Respondent was already known to the police from prior criminal contacts.
14 Respondent was arrested on February 25, 2009.

15 **SEVENTH CAUSE FOR DISCIPLINE**

16 **(March 9, 2009 Criminal Conviction for Felony Child Abuse &**
17 **Possession of Methamphetamine on February 25, 2009)**

18 24. Respondent has subjected his license to disciplinary action under sections
19 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is
20 substantially related to the qualifications, functions, and duties of a registered nurse. The
21 circumstances are as follows:

22 a. On or about March 9, 2009, in a criminal proceeding entitled
23 *People of the State of California v. Ted Larive*, in San Diego County Superior Court, case
24 number CS226827, Respondent pled guilty to violating Penal Code section 273a, subdivision
25 (a), child abuse; and Health and Safety Code section 11377, subdivision (a), possession of a
26 controlled substance, to wit methamphetamine, both felonies.

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b. As a result of the conviction, on or about April 7, 2009, Respondent was sentenced to 180 days in jail, with credit for 62 days, and five years formal probation. Respondent was further ordered to pay \$3,014 in fees, fines, and restitution.

PRAYER


WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 393230 issued to Ted Alan Larive;

2. Ordering Ted Alan Larive to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 6/5/09


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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